

OFFICIAL GAZETTE

GOVERNMENT OF GOA, DAMAN AND DIU

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Law and Judiciary Department

Notification

LD/4909/74

The following Central Acts which were recently passed by the Parliament and assented to by the President of India are hereby published for general information of the public.

M. S. Borkar, Under Secretary (Law)

Panaji, 17th October, 1974.

The Compulsory Deposit Scheme (Income-Tax Payers) Act, 1974

AN ACT

to provide, in the interest of national economic development, for compulsory deposit by classes of income-tax payers and for the framing a scheme in relation thereto, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. **Short title, extent and commencement.**— (1) This Act may be called the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 17th day of July, 1974.

2. **Definitions.**— In this Act, unless the context otherwise requires,—

(a) "compulsory deposit" means compulsory deposit under this Act;

(b) "deposit" means a deposit of money;

(c) "depositor" means a person who is liable to make a compulsory deposit;

(d) "Income-tax Act" means the Income-tax Act, 1961;

43 of 1961.

(e) all other words and expressions used herein but not defined and defined in the Income-tax Act

shall have the meanings, respectively, assigned to them in that Act.

3. Persons liable to make compulsory deposits.—

(1) Subject to the provisions of this Act, the persons specified in sub-section (2) shall be liable to make compulsory deposits for the assessment year commencing on the 1st day of April, 1975 and the assessment year commencing on the 1st day of April, 1976.

(2) The persons referred to in sub-section (1) are following, namely:—

(a) every person, being —

(i) an individual, who is a citizen of India;

(ii) a Hindu undivided family;

(iii) a trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), if the income in respect of which the trustee is liable to income-tax as a representative assessee or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown; and

6 of 1913.

(b) every person who is assessable under the Income-tax Act in respect of the total income of an individual, or a Hindu undivided family or a trustee specified in clause (a).

4. Requirement as to compulsory deposit.—

(1) Where, in relation to an assessment year referred to in sub-section (1) of section 3, the current income of any person, being an individual or a Hindu undivided family or a trustee specified in clause (a) of sub-section (2) of that section, exceeds fifteen thousand rupees, such person, or if any other person is assessable under the Income-tax Act in respect of the total income of such person, the person so assessable, shall make, in accordance with and subject to the provisions of this Act and any scheme framed thereunder, a compulsory deposit for that assessment year at the rates specified in the Schedule.

(2) Where, in the case of any person specified in sub-section (2) of section 3,

a deduction is required to be made under the Additional Emoluments (Compulsory Deposit) Ordinance, 1974, the amount of the compulsory deposit which such person is liable to make under this Act for any assessment year shall be reduced by the amount deducted under that Ordinance during the financial year immediately preceding that assessment year; and where such deduction is equal to or exceeds the amount of such compulsory deposit, it shall not be necessary for such person to make a compulsory deposit for that assessment year.

Explanation.—When any Central Act repeals and replaces (with or without any modification) the Additional Emoluments (Compulsory Deposit) Ordinance, 1974, the references to the said Ordinance in this sub-section shall be construed as references to such Central Act.

(3) For the purposes of this section, "current income", in relation to an assessment year, means,—

(a) in a case where the Income-tax Officer has made an order under sub-section (1) or sub-section (3) of section 210 of the Income-tax Act requiring the person to pay advance tax during the financial year immediately preceding that assessment year and the person has not sent an estimate under sub-section (1) or sub-section (2) or sub-section (3A) of section 212 of that Act,—

(i) if the total income of the latest previous year in respect of which the person has been assessed by way of regular assessment forms the basis of computation of advance tax payable by him, such total income [exclusive of capital gains and income referred to in sub-clause (ix) of clause (24) of section 2 of the Income-tax Act] as increased by the net agricultural income, if any, which has been taken into account for the purposes of charging income-tax for the assessment year relevant to that previous year; or

(ii) if the total income of the previous year on the basis of which income-tax has been paid by the person under section 140A of the Income-tax Act forms the basis of computation of advance tax, such total income [exclusive of capital gains and income referred to in sub-clause (ix) of clause (24) of section 2 of the Income-tax Act] as increased by the net agricultural income, if any, returned by the person in the return of income for the assessment year relevant to that previous year;

(b) in a case where an estimate is sent by the person under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of section 212 of the Income-tax Act, the total income [exclusive of capital gains and income referred to in sub-clause (ix) of clause (24) of section 2 of the Income-tax Act] as estimated by him, of the period which would be the previous year for that assessment year, as increased by the net agricultural income, if any, of that period, as estimated by him;

(c) in any other case, if the total income of the person, as estimated by him, of the period which

would be the previous year for that assessment year exceeds the maximum amount not chargeable to income-tax in his case, such total income [exclusive of capital gains and income referred to in sub-clause (ix) of clause (24) of section 2 of the Income-tax Act] as increased by the net agricultural income, if any, of that period, as estimated by him.

Explanation.—In this sub-section, "net agricultural income" means the net agricultural income as defined in the Finance Act of the relevant year.

5. Time for making compulsory deposit.—A depositor shall make the compulsory deposit for an assessment year referred to in sub-section (1) of section 3,—

(a) in a case where such depositor is required to pay advance tax under the Income-tax Act in the financial year immediately preceding that assessment year; at any time (in one sum or in instalments of his choice) before the expiry of the date on which the last instalment of advance tax is payable by him in accordance with the provisions of section 211 or, as the case may be, sub-section (3A) of section 212 of that Act;

(b) in any other case, at any time (in one sum or in instalments of his choice) before the end of the financial year immediately preceding that assessment year.

6. Order by Income-tax Officer for compulsory deposit in certain cases.—(1) If, in relation to an assessment year referred to in sub-section (1) of section 3, the correct income of a person falling under clause (c) of sub-section (3) of section 4 exceeds fifteen thousand rupees and such person has failed to make the compulsory deposit for that assessment year, the Income-tax Officer shall, by order in writing, direct that such person shall make the compulsory deposit with reference to his correct income.

(2) For the purposes of this section, "correct income" of a person, in relation to an assessment year, means—

(i) in a case where the person has furnished the return of income under section 139 of the Income-tax Act, the total income [exclusive of capital gains and income referred to in sub-clause (ix) of clause (24) of section 2 of the Income-tax Act] returned by him, as increased by the net agricultural income, if any, returned by him;

(ii) in a case where the person has failed to furnish the return of income under section 139 of the Income-tax Act and assessment is made under section 144 of that Act, the total income [exclusive of capital gains and income referred to in sub-clause (ix) of clause (24) of section 2 of the Income-tax Act] determined on assessment, as increased by the net agricultural income, if any, determined on assessment.

Explanation.—In this sub-section, "net agricultural income" has the meaning assigned to it in the *Explanation* to sub-section (3) of section 4.

7. Compulsory deposit to carry simple interest.—

(1) Every compulsory deposit made by or recovered from a depositor shall carry simple interest at a rate equal to the bank deposit rate.

Explanation.—In this sub-section, “bank deposit rate” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949.

10 of 1949.

(2) The interest shall be calculated in such manner as may be specified in the scheme framed under section 19.

(3) For the purposes of the deduction under section 80L of the Income-tax Act, interest received on a compulsory deposit shall be deemed to be interest received on a deposit with a banking company to which the Banking Regulation Act, 1949, applies.

10 of 1949.

8. Repayment of compulsory deposit.—The amount of compulsory deposit made by or recovered from a depositor in any financial year shall be repayable in five equal annual instalments commencing from the expiry of two years from the end of that financial year, together with the interest due on the whole or, as the case may be, part of the amount of the compulsory deposit which has remained unpaid:

Provided that nothing in this section shall prevent earlier repayment of the deposit or any instalment thereof together with the interest due in any case in which the Income-tax Officer is satisfied that extreme hardship will be caused unless such repayment is made.

9. Intimation regarding compulsory deposit.—Every depositor shall send to the Income-tax Officer, along with the return of income for the assessment year for which he is liable to make a compulsory deposit, proof of the fact of such deposit having been made.

10. Penalty for failure to make compulsory deposit.—(1) If, in relation to an assessment year referred to in sub-section (1) of section 3, any person who is liable to make a compulsory deposit [being a person falling under clause (a) or clause (b) of sub-section (3) of section 4] —

(a) has failed to make the compulsory deposit within the time allowed under section 5, or

(b) has made the compulsory deposit within such time but the deposit so made falls short of the requisite amount,

the Income-tax Officer shall, by order in writing, direct that such person shall pay, by way of penalty, a sum —

(i) which, in the case referred to in clause (a), shall be equal to twenty-five per cent. of the compulsory deposit which he is liable to make; and

(ii) which, in the case referred to in clause (b), shall be equal to twenty-five per cent. of the amount by which the compulsory deposit made by him falls short of the requisite amount.

(2) If, in relation to an assessment year referred to in sub-section (1) of section 3, the correct income of a person falling under clause (c) of sub-section (3) of section 4, exceeds fifteen thousand rupees and such person —

(a) has failed to make the compulsory deposit within the time allowed under section 5, or

(b) has made the compulsory deposit within such time on the basis of his own estimate but the deposit so made is less than seventy-five per cent. of the compulsory deposit which he would have been liable to make on the basis of his correct income,

the Income-tax Officer shall, by order in writing, direct that such person shall pay by way of penalty a sum —

(i) which, in the case referred to in clause (a), shall be equal to twenty-five per cent. of the compulsory deposit calculated with reference to his correct income; and

(ii) which, in the case referred to in clause (b), shall be equal to twenty-five per cent. of the amount by which the compulsory deposit made by him falls short of the compulsory deposit calculated with reference to his correct income.

Explanation.—In this sub-section, “correct income” has the meaning assigned to it in sub-section (2) of section 6.

(3) No order imposing a penalty under this section shall be made against any person unless such person has been heard or has been given a reasonable opportunity of being heard.

11. Authorities.—(1) Every Director of Inspection, Commissioner of Income-tax, Additional Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax, Income-tax Officer and Inspector of Income-tax, shall have the like powers and perform the like functions under this Act as he has and performs under the Income-tax Act and for the exercise of his powers and the performance of his functions, his jurisdiction under this Act shall be the same as he has under the Income-tax Act and for this purpose compulsory deposit under this Act shall be deemed to be tax chargeable under that Act.

(2) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued —

(a) so as to require any authority referred to in sub-section (1) to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(3) Every Income-tax Officer employed in the execution of this Act shall observe and follow the orders, instructions and directions issued for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions.

12. Appeals and revision.—Any depositor, aggrieved by any order of the Income-tax Officer im-

sing a penalty under section 10, may appeal to the Appellate Assistant Commissioner and the provisions of the Income-tax Act relating to appeals, reference and revision shall so far as may be, apply in relation to such order as they apply in relation to an order of the Income-tax Officer imposing a penalty under section 221 of that Act.

13. Rectification of mistakes. — (1) With a view to rectifying any mistake apparent from the record, the Income-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal may, of his, or its, own motion or on an application by the depositor in this behalf, amend any order passed by him or it in any proceeding under this Act, within four years of the date on which such order was passed.

(2) An amendment which has the effect of enhancing the compulsory deposit or any penalty imposed under this Act shall not be made under this section unless the authority concerned has given notice to the depositor of its intention so to do and has allowed the depositor a reasonable opportunity of being heard.

(3) Where an amendment is made under this section, the order shall be passed in writing by the authority concerned.

(4) Where any such amendment has the effect of enhancing the compulsory deposit or the penalty imposed under this Act, the Income-tax Officer shall serve on the depositor a notice specifying the sum which has to be deposited or paid.

14. Collection and recovery of compulsory deposit and penalty. — (1) When, in consequence of any order passed under this Act, any compulsory deposit or penalty has to be made or paid, the Income-tax Officer shall serve upon the depositor a notice specifying the sum which has to be deposited or paid.

(2) The sum specified in a notice under sub-section (1) shall be deposited or, as the case may be, paid within thirty-five days of the service of the notice at the place and with or to the person mentioned in the notice:

Provided that on an application made by the depositor before the expiry of the said period of thirty-five days, the Income-tax Officer may extend the time for making the deposit or payment or allow the deposit or payment to be made by instalments subject to such conditions as he may think fit to impose in the circumstances of the case.

(3) If a depositor fails to make the compulsory deposit within the time allowed under section 5, or if he fails to deposit or, as the case may be, pay the amount which he is required to deposit or pay by notice under sub-section (1) within the time allowed under sub-section (2) (whether fixed originally or on extension), at the place and with or to the person mentioned in the said notice, the depositor shall be deemed to be in default.

(4) Any arrear of compulsory deposit and any penalty imposed under this Act shall be recoverable in the manner provided in Chapter XVII-D of the Income-tax Act for recovery of arrears of tax and for this purpose the provisions of that Chapter shall

apply as if references to the assessee therein were references to the depositor.

15. Rounding off. — (1) The amount of the current income, correct income and compulsory deposit shall be rounded off to the nearest multiple of ten rupees and, for this purpose, any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten.

Explanation. — In this sub-section, "current income" and "correct income" have the meanings respectively assigned to them in sub-section (3) of section 4 and sub-section (2) of section 6.

(2) The amount of penalty payable under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.

16. Applicability of Chapter XV of Income-tax Act. The provisions of Chapter XV of the Income-tax Act relating to liability in special cases shall, so far as may be, apply in relation to compulsory deposits and penalties imposable under this Act as they apply in relation to income-tax payable and penalties imposable under that Act.

17. Protection against attachment. — (1) The amount of compulsory deposit and interest thereon standing to the credit of any depositor shall not be liable to attachment under a decree or order of any court in respect of any debt or liability incurred by the depositor.

(2) The amount of compulsory deposit and interest thereon standing to the credit of a depositor at the time of his death and payable to his nominee shall vest in the nominee and shall be free from debt or other liability incurred by the deceased or incurred by the nominee before the death of the depositor.

18. Protection of action taken in good faith. — No suit, prosecution or other legal proceeding shall lie against the Government or against any officer of the Government for anything which is in good faith done or intended to be done under this Act or any scheme framed thereunder.

19. Compulsory Deposit Scheme. — (1) The Central Government shall, by notification in the Official Gazette, frame a scheme or schemes, to be called Compulsory Deposit (Income-tax Payers) Scheme or Schemes, in relation to compulsory deposits.

(2) A scheme framed under sub-section (1) may provide for —

(a) the manner in which compulsory deposits shall be made;

(b) the documents to be issued to persons by whom deposits have been made as evidence of such deposits;

(c) the authority or authorities by or through whom the deposits may be collected;

(d) the nomination of any person to receive the amount standing to the credit of a depositor in the event of his death or in cancellation or change of such nomination;

(e) the issue of duplicate of any document issued as evidence of any deposit in the event of loss or destruction of the original and the fee (not exceeding two rupees) on the payment of which such duplicate may be issued;

(f) any other matter which may be necessary or proper for the effective implementation of the scheme.

(3) The Central Government may, by notification in the Official Gazette, add to, amend or vary any scheme framed under sub-section (1).

(4) A scheme framed under sub-section (1) or a notification issued under sub-section (3) may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the scheme or notification.

(5) Any scheme framed under sub-section (1) or any notification issued under sub-section (3) shall have effect notwithstanding anything contained in any law for the time being in force (other than this Act) or any instrument having effect by virtue of any law other than this Act.

(6) Every scheme framed under sub-section (1) and every notification issued under sub-section (3) shall be laid, as soon as may be, after it is framed or issued before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or notification or both Houses agree that the scheme or notification should not be framed or issued, the scheme or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme or notification.

20. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

21. Repeal and saving.—(1) The Compulsory Deposit Scheme (Income-tax Payers) Ordinance, 1974, is hereby repealed. 10 of 1974.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See section 4(1)]

Rates of compulsory deposit

- | | |
|---|---|
| (1) Where the current income exceeds Rs. 15,000 but does not exceed Rs. 25,000. | 4 per cent of the current income; |
| (2) Where the current income exceeds Rs. 25,000 but does not exceed Rs. 70,000. | Rs. 1,000 plus 6 per cent of the amount by which the current income exceeds Rs. 25,000; |
| (3) Where the current income exceeds Rs. 70,000. | Rs. 3,700 plus 8 per cent of the amount by which the current income exceeds Rs. 70,000; |

Provided that where the current income exceeds Rs. 15,000 but does not exceed Rs. 15,620, the compulsory deposit shall in no case exceed the amount by which the current income exceeds Rs. 15,000:

Provided further that where in the case of any depositor the amount of compulsory deposit calculated in accordance with the foregoing provisions is less than Rs. 100, it shall not be necessary for him to make such deposit.

Explanation.—In this Schedule, “current income” has the meaning assigned to it in sub-section (3) of section 4.

The Additional Emoluments (Compulsory Deposit) Act, 1974

CHAPTER I

Preliminary

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Persons to whom this Act applies.
4. Act to have overriding effect.

CHAPTER II

Compulsory Deposit of Additional Emoluments

5. Additional Wages Deposit Account and Additional Dearness Allowance Deposit Account.
6. Duty of employer or other person to make deductions of additional wages and additional dearness allowance from emoluments.
7. Deposits to carry simple interest.
8. Assessment for the purpose of income-tax.
9. Repayment of deposits.
10. Power of Central Government to frame schemes.
11. Rounding off.

CHAPTER III

Miscellaneous

12. Amounts due to be first charge in the case of insolvency or liquidation of the employer.
13. Transfer of establishments.
14. Penalties.
15. Offences by companies.
16. Cognizance of offences.
17. Power to exempt.
18. Power to delegate.
19. Protection against attachment.
20. Power to call for returns and inspect accounts.
21. Protection of action taken in good faith.
22. Persons performing functions under this Act to be public servants.

Sections

- 23. Recovery of arrears.
- 24. Power to make rules.
- 25. Rules and schemes to be laid before Parliament.
- 26. Power to remove difficulties.
- 27. Repeal and saving.

The Additional Emoluments (Compulsory Deposit) Act, 1974

AN
ACT

to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Additional Emoluments (Compulsory Deposit) Act, 1974.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 6th day of July, 1974, except section 14 which shall come into force at once.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “appointed day” means the 6th day of July, 1974;

(b) “additional dearness allowance” means such dearness allowance as may be sanctioned from time to time, after the appointed day, over and above the amount of dearness allowance payable in accordance with the rate in force immediately before the date from which such sanction of additional dearness allowance is to take effect.

Explanation I.—Where payment of dearness allowance is linked to a cost of living index or any other factor, any automatic payment, after the appointed day, of dearness allowance in consequence of any rise in such cost of living index or in consequence of any change in such other factor shall, notwithstanding the provisions of this clause, be deemed to be the additional dearness allowance.

Explanation II.—For the purpose of computation of the additional dearness allowance in relation to an employee who enters into any post after the appointed day, dearness allowance payable, immediately before the appointed day, in relation to such post shall be deemed to be the dearness allowance payable to such employee as if he were holding that post on the appointed day and any excess over and above the said dearness allowance shall be deemed, for the purposes of this Act, to be the additional dearness allowance in relation to such employee;

(c) “additional wages” means such wages, over and above the wages payable to an employee in accordance with the rates in force immediately

before the appointed day, as may become payable to the employee in respect of any period after the appointed day in pursuance of any wage revision, whether by or under an agreement or settlement between the parties or any award, decree or order of any court, tribunal or other authority or otherwise, but does not include—

(i) any increment due to the employee in accordance with the time scale of pay applicable to the post held by him immediately before the appointed day, and any consequent increase in any allowance (not being dearness allowance) admissible under any rule or order in force immediately before the appointed day;

(ii) any higher wages payable to the employee on his—

(a) promotion to a higher post and any increment, being an increment within the prescribed limits, due to the employee in such higher post;

(b) deputation or transfer to an equivalent post or to any post involving higher responsibilities and duties;

(iii) any special pay, honorarium, fee or reward payable for any special work done;

(iv) any remuneration payable for overtime work;

(v) any increase in wages consequent on the revision of the minimum rates of wages fixed under the Minimum Wages Act, 1948;

11 of 1948

(vi) any increase in wages sanctioned in pursuance of the recommendations made—

(a) by the Third Central Pay Commission;

(b) before the appointed day, by any Pay Commission appointed by a State Government, in relation to the employees of that Government;

(c) by any committee constituted, before the appointed day, by Parliament, Supreme Court or any High Court in relation to any employee of Parliament, Supreme Court or High Court, as the case may be.

Explanation I.—Where any wage revision made after the appointed day is to be effective from a date prior to the appointed day, the wages payable immediately before the appointed day, before such wage revision, shall, for the purposes of computation of additional wages, be deemed to be the wages.

Explanation II.—Any bonus (including incentive and production bonus) paid after the appointed day at a rate over and above the rate at which it was last paid before the appointed day, shall be deemed for the purposes of this Act, to be additional wages;

(d) “bank deposit rate” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve

Bank of India under the Banking Regulation Act, 1949;

10 of 1949

(e) "dearness allowance" means all cash payments, by whatever name called, made to an employee on account of rise in the cost of living;

(f) "Deposit Account" means an account opened and maintained under section 5;

(g) "emoluments" includes wages and dearness allowance;

(h) "employer" means, —

(i) in relation to an establishment which is a factory, the owner or occupier, and where a person is named as manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named;

63 of 1948

(ii) in relation to an establishment belonging to or under the control of the Central Government or a State Government, the person or authority appointed by the appropriate Government for the supervision and control of the employees, or where no reason has been so appointed, the head of the Department concerned;

(iii) in relation to an establishment belonging to or under the control of any local authority, the person appointed by such authority for the supervision and control of the employees, or where no person has been so appointed, the Chief Executive Officer of the local authority;

(iv) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

and includes, in the case of a deceased employer, the legal representative of such deceased employer;

(i) "local authority" means any municipal committee, district board, body of port commissioners, panchayat or other authority legally entitled to, or entrusted by the Central or any State Government with the control or management of any municipal or local fund;

(j) "nominated authority" means such authority as may be nominated by the Central Government for the purposes of this Act and different authorities may be nominated for different purposes;

(k) "notification" means a notification published in the Official Gazette;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "scheme" means a scheme framed under this Act;

(n) "specified authority" means the authority specified under sub-section (1) of section 5;

(o) "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed, or capable of being expressed, in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his em-

ployment or of work done in such employment, and includes —

(i) any remuneration payable under any agreement, or settlement between the parties or any award, decree or order of any court, tribunal or other authority;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(iii) any additional remuneration payable under the terms of employment, including bonus, whether under a scheme of profit sharing or otherwise;

(iv) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(v) any allowance paid for house accommodation, or where house accommodation is provided, the value of such accommodation, and the value of electricity or water, or both, supplied, and the value of medical attendance or other amenity,

but does not include —

(1) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(2) any travelling or running allowance or the value of any travelling concession;

(3) any sum, not exceeding rupees two hundred and fifty per annum, paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(4) any compensation or gratuity payable on the termination of employment;

(5) any dearness allowance.

3. Persons to whom this Act applies. — This Act shall apply to an employee of —

(a) the Central or State Government;

(b) a local authority;

(c) a company as defined in section 3 of the Companies Act, 1956, including a foreign company within the meaning of section 591 of the Companies Act, 1956, and a Government company as defined in section 617 of that Act;

1 of 1956.

(d) any other corporation, including a society or body established by, or registered under, a Central, Provincial or State Act;

(e) any individual, association of persons or body of individuals, partnership firm or Hindu undivided family required by the Income-tax Act, 1961 to deduct income-tax at source from the emoluments paid to their employees;

43 of 1961.

(f) any establishment owned or maintained in India by a trust, fund or institution established for a charitable or religious purpose, and required by the Income-tax Act, 1961, to deduct income-tax at source from the emoluments paid to their employees;

43 of 1961.

(g) any establishment, not being an establishment owned by Government, local authority or person specified,

respectively, in clauses (a) to (f) (both inclusive), to which the provisions of any law relating to provident funds (other than those established under the Public Provident Fund Act, 1968) 23 of 1968 apply;

(h) any other establishment, not being an establishment to which any of the foregoing clauses apply, established at the instance, or in pursuance of a resolution, of the Central or State Government or wholly or substantially financed by the Central or State Government.

Explanation.—Where any grant or loan to an establishment from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees five lakhs and the amount of such grant or loan is not less than seventy-five per cent. of the total expenditure of that establishment, such establishment shall be deemed, for the purposes of this Act, to be substantially financed by the Central or State Government, as the case may be.

4. Act to have over-riding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

CHAPTER II

Compulsory Deposit of Additional Emoluments

5. Additional Wages Deposit Account and Additional Dearness Allowance Deposit Account.—(1) There shall be opened by such authorities as may be specified in the scheme two separate accounts, to be known, respectively, as the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, and different authorities may be specified for different establishments or different categories of employees or establishments.

(2) The specified authority shall, in relation to each Deposit Account, open a separate ledger account in the name of each employee in relation to whom any contribution is made to the said Account, and credit the contributions so made in the said ledger account.

6. Duty of employer or other person to make deductions of additional wages and additional dearness allowance from emoluments.—(1) For the purposes of this Act, the deductions specified in sub-section (2) shall be made,—

(a) in the case of additional wages, for a period of one year from the appointed day; and

(b) in the case of additional dearness allowance, for a period of two years from the appointed day.

(2) On the commencement of this section,—

(a) every employer, who draws, from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, and disburses, after the appointed day, emoluments of an employee to whom this Act applies, shall, as and when emoluments are disbursed by him for any period, deduct from the emoluments so disbursed, the whole of the additional wages

and one-half of the additional dearness allowance and credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(b) every other employer, who disburses, after the appointed day, emoluments to any employee to whom this Act applies, shall, as and when emoluments are disbursed by him for any period, deduct from the emoluments so disbursed, the whole of the additional wages and one-half of the additional dearness allowance, and shall remit, in accordance with the scheme, the amounts so deducted to the nominated authority and on receipt of such amounts the nominated authority shall credit the amounts so received to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(c) any employee, to whom this Act applies, who draws, after the appointed day, his own emoluments shall,—

(i) if he is employed in an establishment owned or maintained by Government, make deductions from his salary bill in respect of the whole of the additional wages and one-half of the additional dearness allowance and the specified authority shall credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(ii) if he is employed in any other establishment, remit the whole of the additional wages and one-half of the additional dearness allowance, in accordance with the scheme, to the nominated authority, and on receipt of such amount, the nominated authority shall credit the amount so received to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively.

Explanation.—In computing the amount to be credited to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, the amount contributed in relation to such additional wages or additional dearness allowance shall not—

(a) to the extent of the contribution which is compulsorily required to be made to any provident or other fund under any law for the time being in force; or

(b) to the extent of the contribution made to any other provident fund, recognised under any other law for the time being in force, at a rate not exceeding the rate at which such contribution was being made immediately before the appointed day, be taken into account.

(3) The specified authority shall, as soon as may be practicable after the end of each year, prepare separately, in relation to the amounts credited to the respective Deposit Accounts to the credit of each employee, and furnish to the employee a copy of the said accounts showing therein the amounts credited thereto in relation to the employee.

7. Deposits to carry simple interest.—(1) Every amount credited under section 6, in relation to an employee in a Deposit Account, shall carry simple interest at a rate, which shall be two and a half per cent. over and above the bank deposit rate.

(2) The interest due on the amount credited in any Deposit Account shall be calculated in such manner as may be specified in the scheme.

(3) Interest accruing on amounts credited under section 6 to any Deposit Account shall ensure to the benefit of the employees in relation to whom such amounts have been credited.

(4) For the purpose of the deductions under section 80L of the Income-tax Act, 1961, interest received on a deposit under this Act shall be deemed to be interest received on a deposit with a banking company to which the Banking Regulation Act, 1949, applies. 43 of 1961. 10 of 1949.

8. Assessment for the purpose of income-tax — (1) For the purposes of computing, under the Income-tax Act, 1961, the total income of an employee, the amount credited to his ledger account in the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account shall not be included in his total income of the previous year in which it is so credited; but so much of the amount as is repaid to him shall be liable to be included in his total income of the previous year in which it is repaid. 43 of 1961.

(2) For the purposes of computing, under the Income-tax Act, 1961, the total income of an employee, the amount repaid to him under this Act shall be deemed to be salary paid to him in arrears and the provisions of sub-section (1) of section 89 of that Act shall apply accordingly. 43 of 1961.

Explanation.—In this section, “previous year” and “total income” have the meanings respectively assigned to them in the Income-tax Act, 1961. 43 of 1961.

9. Repayment of deposits.— (1) Subject to the provisions of sub-section (2), every amount credited to the Deposit Accounts shall be repayable with interest due thereon, —

(a) in the case of an amount credited to the Additional Wages Deposit Account, at any time after the expiry of one year from the appointed day; and

(b) in the case of an amount credited to the Additional Dearness Allowance Deposit Account at any time after the expiry of two years from the appointed day:

Provided that nothing in this section shall prevent earlier repayment of any amount credited to either of the Deposit Accounts with interest due thereon in any case in which any person authorised by the Central Government in this behalf is satisfied that extreme hardship will be caused unless such repayment is made:

Provided further that an employee may, at his option, retain the whole or any part of the amount credited in relation to him in the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account, or both, until his superannuation or

until such date as may be specified by the Government in this behalf:

Provided also that the whole of the amount standing to the credit of an employee (not being an employee in a seasonal establishment) in either or both of the Deposit Accounts shall be repaid to him on his superannuation or resignation from office or on the termination of his employment.

(2) The aggregate amount credited to any Deposit Account by or in relation to an employee shall be repaid to the employee in five equal annual instalments commencing from the expiry of one year or two years, as the case may be, from the appointed day, together with interest due on the whole or, as the case may be, part of the amount of compulsory deposit which remains unpaid.

10. Power of Central Government to frame schemes.—(1) The Central Government shall, by notification, frame one or more schemes in relation to the amounts credited to the Deposit Accounts under this Act.

(2) A scheme framed under sub-section (1) may provide for —

(a) the authorities by which the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account shall be opened and maintained;

(b) the time and manner in which amounts deducted from additional wages or additional dearness allowance shall be deducted and credited to the respective Deposit Account;

(c) the documents to be issued to persons in relation to whom amounts have been credited to the Deposit Accounts as evidence of such credit;

(d) authority or authorities by or through which credits to the Deposit Accounts may be made;

(e) the accounts to be maintained with respect to the amounts credited to the Deposit Accounts and the officer by whom such Accounts shall be maintained;

(f) the nomination of persons to receive the amount standing in a Deposit Account to the credit of an employee in the event of his death, and cancellation or change of such nomination;

(g) the issue of duplicate of any document issued as evidence of any credit in the event of loss or destruction of the original and the fee, not exceeding rupees two, on the payment of which such duplicate may be issued;

(h) repayment of amounts credited to the Deposit Accounts with interest due thereon and the conditions, if any, under which such repayment may be made;

(i) any other matter which may be necessary or proper for the effective implementation of the scheme.

(3) A scheme framed under this section may provide that all or any of its provisions shall take effect, either prospectively or retrospectively, on such date, not being a date earlier than the appointed day, as may be specified in this behalf in the scheme and every scheme framed under this section shall have effect notwithstanding anything contained in any law (other than this Act) for the time being in force or in any instrument having effect by virtue of any enactment other than this Act.

(4) The Central Government may make a scheme to add to, amend or vary any scheme framed under sub-section (1).

11. Rounding off.—Where the amount of any credit to be made in any Deposit Account contains a part of a rupee, then, such part, if it is fifty paise or more, shall be increased to one complete rupee and if it is less than fifty paise, it shall be ignored.

CHAPTER III

Miscellaneous

12. Amounts due to be first charge in the case of insolvency or liquidation of the employer.—(1) Where any amount required by this Act to be credited to any Deposit Account or remitted to a nominated authority has not been so credited or remitted by any employer, the amount in respect of which such omission or failure was made, together with interest due thereon calculated at the rate specified in sub-section (1) of section 7, shall, in the event of the employer being adjudicated by any court to be insolvent or, being a company is ordered by any court to be wound up, be deemed to be first charge on the assets of the insolvent or of the company, as the case may be, and shall have priority over all other debts and be paid in full.

(2) The court shall cause the sum which is required, under sub-section (1), to be paid in priority to all other debts to be remitted to the nominated authority for crediting the same to the appropriate Deposit Account.

13. Transfer of establishments.—Where an employer, in relation to an establishment to which this Act applies, transfers that establishment in whole or in part by sale, gift or otherwise or grants any licence in respect of such establishment, the employer and the person to whom the establishment is so transferred or the licence is so given shall be jointly and severally liable to credit to the appropriate Deposit Account or, as the case may be, remit to the nominated authority, the sums which are required by this Act to be so credited or remitted:

Provided that the liability of the transferee or licensee shall be limited to the value of the assets obtained by him on such transfer or licence, as the case may be.

14. Penalties.—(1) Whoever, with a view to—

(a) avoiding making any deduction of additional wages and additional dearness allowance and crediting the same to the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account, as the case may be, or

(b) aiding or abetting any other person to avoid making any such deduction or credit,

knowingly makes, or causes to be made, any statement or representation which he knows to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any employer who omits or fails to credit to any Deposit Account or remit any amount to the nominated authority, as and when such credit or

remittance becomes due under this Act or any scheme framed thereunder, shall be punished—

(a) with imprisonment for a term which shall not be less than three months but may extend—

(i) in the case of the first offence, to six months, and

(ii) in the case of any second or subsequent offence, to one year:

Provided that the court may, for any adequate and special reasons, to be recorded by it in the judgment, impose a sentence of imprisonment for a term lesser than three months or a fine in lieu of imprisonment; and

(b) also with fine which shall not be less than the amount which has not been credited to a Deposit Account or remitted to the nominated authority as required by this Act, and the interest due thereon, calculated at the rate specified in sub-section (1) of section 7, but may extend to twice the said amount and the interest due thereon, and out of the fine, if realised, the court trying the offence shall cause an amount equal to the amount which has not been credited to a Deposit Account or remitted to the nominated authority with interest due thereon, to be remitted to the nominated authority for crediting the same to the appropriate Deposit Account, and on such amount being remitted to the nominated authority, the liability of the employer shall, to the extent of the amount so remitted by the court, stand discharged.

(3) whoever contravenes any provision of this Act or any scheme or order made thereunder for which no penalty has been separately provided for shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

15. Offences by companies.—(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm, and, in relation to a Hindu undivided family, means the Karta of such family.

16. Cognizance of offences. — No court shall take cognizance of any offence punishable under this Act except upon a complaint made by the Central Government or any officer or authority authorised in writing by the Central Government in this behalf.

17. Power to exempt. — Where the Central Government is of the opinion that it is necessary or expedient so to do either in the public interest or having regard to the peculiar circumstances of any case, it may, by notification, and subject to such conditions, if any, as it may specify in the notification, —

(a) exempt any establishment or category of employees working in any establishment from the operation of all or any of the provisions of this Act;

(b) exempt, in the case of extreme hardship in any employee, from crediting any amount in relation to such employee to the Additional Wages Deposit Account;

(c) empower deductions from additional wages in relation to an employee or class of employees, at a rate lesser than the rate specified in this Act.

18. Power to delegate. — The Central Government may, by notification, direct that any power which may be exercised by it under this Act or any scheme framed under this Act shall, subject to such restrictions and conditions, if any, as it may specify in the notification, be exercised also by —

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government; or

(c) such other person or authority, as may be specified in the notification;

Provided that the powers conferred by section 10 and section 24 shall not be delegated under this section.

19. Protection against attachment. — (1) The amount standing to the credit of any employee in any Deposit Account shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employee.

(2) Any amount standing to the credit of an employee in any Deposit Account at the time of his death and payable to his nominee under the scheme shall vest in the nominee and shall be free from any debt or other liability incurred by the deceased or incurred by the nominee before the death of the employee.

20. Power to call for returns and inspect accounts.

(1) The nominated authority or any officer authorised by the nominated authority in this behalf may call for such returns, as may be prescribed, from any employer to whom this Act applies.

(2) The books of account and other books and papers of any employer to whom this Act applies shall be open to inspection by the nominated authority or any person authorised by the Central Government in this behalf during business hours:

Provided that such inspection may be made without giving any previous notice to the employer or any officer of the employer.

(3) The nominated authority or any authorised officer may, during the course of inspection, —

(i) make, or cause to be made, copies of the books of account and other books and papers;

(ii) place, or cause to be placed, any marks of identification thereon in token of the inspection having been made.

(4) If after inspection the nominated authority or the authorised officer finds that any additional wages or additional dearness allowance has not been credited by the employer to the appropriate Deposit Account or, as the case may be, remitted to the nominated authority, it or he shall determine the amount in respect of which such credit or remittance has not been made:

Provided that no such determination shall be made except after giving to the employer a reasonable opportunity of being heard.

(5) It shall be the duty of every employer to whom this Act applies, to furnish to the nominated authority a copy of the award, decree or order of any court, tribunal or other authority or agreement or settlement relating to wage revision or revision of dearness allowance and also to produce such books of account and other books and papers as the nominated authority or the officer making the inspection may require;

(6) Where any revision of wages or dearness allowance is made otherwise than in pursuance of any award, decree or order of any court, tribunal or other authority or agreement or settlement, the employer shall give an intimation to the nominated authority about such revision of wages or dearness allowance and furnish to the nominated authority such books of account and other books and papers as that authority may require.

21. Protection of action taken in good faith. — No suit or other legal proceeding shall lie against the Central Government or any State Government or any officer authorised by the Central or State Government to discharge any functions under this Act, for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any scheme framed thereunder.

22. Persons performing functions under this Act to be public servants. — Any person to whom any power of the Central Government is delegated under section 18 or who is authorised to exercise any power specified in section 20 shall, if he is not a public servant, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1960.

23. Recovery of arrears. — Without prejudice to the provisions of section 14, any amount which ought to have been credited under this Act to a Deposit Account or remitted to the nominated authority but has not been so credited or remitted in accordance with the provisions of this Act or scheme or order made thereunder, shall be payable by the employer, together with interest due thereon calcu-

lated at twice the rate at which interest is payable under sub-section (1) of section 7, and in default of such payment, such amount, together with interest due thereon at the aforesaid rate, shall be recoverable as an arrear of land revenue:

Provided that where any such amount has been recovered by the court under sub-section (2) of section 14, the said amount shall not be recoverable under this section.

24. Power to make rules.—The Central Government may, by notification, make rules to carry out the provisions of this Act.

25. Rules and schemes to be laid before Parliament.—Every rule and every scheme made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the scheme, or both Houses agree that the rule or scheme should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme.

26. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

27. Repeal and saving.—(1) The Additional Emoluments (Compulsory Deposit) Ordinance, 1974 is hereby repealed.

8 of 1974.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed (including any appointment, exemption, nomination, direction or order made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Act; and the repeal of the said Ordinance shall not affect any penalty or punishment incurred in respect of any offence committed against the said Ordinance or any investigation or legal proceeding in respect of such penalty or punishment and any such investigation or legal proceeding may be instituted or continued and any such penalty or punishment may be imposed as if section 12 and other provisions of the said Ordinance, necessary for the purposes aforesaid, had been included in this Act.

The Esso (Acquisition of Undertakings in India) Amendment, Act 1974

AN

ACT

to amend the Esso (Acquisition of Undertakings in India) Act, 1974.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Esso (Acquisition of Undertakings in India) Amendment Act, 1974.

2. Amendment of section 13.—In section 13 of the Esso (Acquisition of Undertakings in India) Act, 1974, in sub-section (1), for the words "one hundred and eighty days", the words "one year" shall be substituted.

4 of 1974.